UNITED NATIONS

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Security Council

Distr.
GENERAL

S/AC.26/1998/11
2 October 1998

Original: ENGLISH

UNITED NATIONS
COMPENSATION COMMISSION
GOVERNING COUNCIL

REPORT AND RECOMMENDATIONS MADE BY THE PANEL OF COMMISSIONERS CONCERNING PART ONE OF THE SECOND INSTALMENT OF INDIVIDUAL CLAIMS FOR DAMAGES ABOVE US$100,000 (CATEGORY "D" CLAIMS)

GE.98-64038

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Introduction

1. This is the third report to the Governing Council of the United Nations Compensation Commission (the "Commission") by the Panel of Commissioners (the "Panel") appointed to review individual claims for damages above US$100,000 (category "D" claims), pursuant to article 38(e) of the Provisional Rules for Claims Procedure 1/ (the "Rules"). This report contains the determinations and recommendations of the Panel in respect of part one of the second instalment, comprising 250 category "D" claims submitted to the Panel by the Executive Secretary of the Commission pursuant to article 32 of the Rules.

2. Part one of the second instalment comprises:

(a) claims for loss types for which the Panel developed methodologies in the first instalment: D1(money); D1(MPA); D3(death); D4(MV); D6(loss of income); D10(payment or relief to others); and D(other) losses (hereinafter referred to as the "application claims"); 2/ and

(b) claims for new loss types in respect of which the Panel has developed processing methodologies in this report. The new loss types are D2(personal injury) and D5(loss of bank accounts, stocks and other securities).

3. The Panel's report in respect of part two of the second instalment will comprise 150 claims relating to personal property ["D4(personal property)"] losses. In view of the diverse nature of the claims for personal property losses, the complexity of legal and valuation issues raised in deliberations with the Panel's consultant, as well as the need to obtain additional information, 3/ pursuant to article 38(d) of the Rules, the Panel has designated these claims as "unusually large or complex" and their review will require a maximum of twelve months. In dealing with the diversity and complexity of the 150 D4(personal property) claims, the Panel expects to be able to establish the processing methodology for the resolution of most of the remaining D4(personal property) claims.

4. In chapters I to VIII of its "Report and Recommendations Made by the Panel of Commissioners Concerning Part One of the First Instalment of Individual Claims for Damages Above US$100,000 (Category 'D' Claims)", 4/ approved by the Governing Council on 2 February 1998, the Panel established the general framework and criteria that it will apply in its consideration of all category "D" claims. The Panel will also take into account the factual background already fully set out in the First Report.

5. This report reflects the claims reviewed and work performed by the Panel since it issued its recommendations concerning Claim 3000001 in February 1998. 5/ In addition to regular communications with the secretariat, the Panel met with the secretariat at the Commission's

headquarters in Geneva to consider claims in part one of the second instalment on the following dates: 3-5 February, 20-22 April, 26-27 May, 11-16 June, and 27-29 July 1998, respectively.

6. The Panel issued two procedural orders in respect of the claims in the second instalment. 6/ The Panel agreed to defer one claim in this instalment as it contains loss types that the Panel does not resolve in the second instalment. 7/

7. In its review of the claims and in making its recommendations, the Panel has applied relevant Security Council resolutions, Governing Council decisions, the Rules, and other relevant principles and practices of international law. The Panel, as in the case of the First Report, has taken into account the level and type of evidence that should reasonably be required of a claimant given the overall circumstances at the time of the loss, particularly in Iraq and Kuwait.

8. In addition to the information presented in the claims, the Panel has also taken into account the following: information accompanying the submission of part one of the second instalment of claims provided by the Executive Secretary pursuant to article 32 of the Rules; additional information and views presented by Governments that have submitted claims, and by the Government of Iraq, in response to the reports submitted to the Governing Council by the Executive Secretary in accordance with article 16 of the Rules; and relevant United Nations and other reports, which the Panel identified in the First Report as the "Background Reports". 8/ The Panel has been particularly careful to ensure that there was adequate evidence that the losses claimed were directly attributable to the invasion and occupation of Kuwait by Iraq and that the amounts awarded were duly established.

I. JURISDICTIONAL ISSUES

9. Some of the claims in part one of the second instalment raise jurisdictional issues which were not addressed by the Panel in the First Report. These issues and the Panel's decisions relating to them are set out hereafter.

A. Bona fide dual nationality

10. According to paragraph 11 of decision 7, 9/ "[c]laims will not be considered on behalf of Iraqi nationals who do not have bona fide nationality of any other State". However, neither the Rules nor any other decision of the Governing Council provide a definition of the term "bona fide dual nationality". In view of the need to resolve the issue of dual nationality raised by two of the claims in the second instalment, the Panel decided that where the claimant had applied for or received the second (non-Iraqi) nationality prior to 2 August 1991 ("the relevant date"), the claimant should be considered as having acquired the second nationality

bona fide. The Panel further decided that, where an Iraqi dual national had acquired the second nationality after the relevant date, the Panel would not be precluded from holding that the second nationality was nevertheless acquired bona fide, if the particular circumstances of the case justified such a conclusion. This view is consistent with that of the category "A" Panel 10/ and has been adopted by the category "C" Panel. 11/

11. Applying the above reasoning, the Panel has found the two claimants in part one of the second instalment to be both bona fide holders of a second nationality and therefore eligible to receive compensation.

B. Claims by third parties

12. The Panel noted that a number of claims have been filed by family members on behalf of individuals who allegedly suffered the loss for which compensation is being sought. The Panel took the view that while as a general rule only claimants who suffered losses and claimed compensation should have filed the claims, there could be instances where a claim could properly be filed on behalf of the individual who suffered the loss. For example, where a claim has been inherited or assigned, or relates to property owned jointly by more than one person, or where the individual concerned is a minor, or where an individual has died or cannot himself or herself file the claim for medical or other reasons, the Panel concluded that for such claims to be eligible for compensation, the claimant must provide proof that he or she is legally authorized or entitled to file the claim on behalf of the individual who suffered the loss. The Panel found that such claims under review in the present instalment satisfied the jurisdictional criteria and therefore considered them compensable.

II. APPLICATION CLAIMS

13. In the First Report, the Panel established the methodologies for loss types of which subsequent claims are treated as application claims. However, some of the application claims in this instalment have raised issues not dealt with in the first instalment. These new issues and the Panel's determinations on them are set out in this section.

A. Di(money) issues

1. Claims for the "forced sale" of items of personal property

14. The Panel considered claims submitted by claimants who, in order to survive during the period of the occupation of Kuwait, were forced to sell items of personal property such as motor vehicles, both in Kuwait and in neighbouring countries, at prices below their market value. The Panel determined that such "forced sales" are a direct result of the invasion and occupation of Kuwait and are therefore compensable. The Panel further held that to be entitled to compensation the claimant must provide the following evidence: proof of presence in Iraq or Kuwait at the appropriate time;

ownership of the property items that were the subject of the sale; an explanation of the circumstances giving rise to the sale; evidence that the sale took place; and evidence of the original value and amount received for the items sold.

2. Claims for payment of customs duties

15. A number of claimants have claimed compensation for customs duties that they were obliged to pay on returning to their home countries following the invasion and occupation of Kuwait. The Panel took cognisance of the fact that many of the claimants concerned had lived in Kuwait for most of their lives and had a reasonable expectation of remaining there had Iraq's invasion and occupation not occurred. In such circumstances where the claimants show that they would not have otherwise left Kuwait or entered another country for residential purposes and that they paid customs duties upon entering a country for the first time, the Panel held that such payments are compensable.

B. D4(MV) issues

1. Vehicles not listed on the (MVV) Table

16. In reviewing the D4(MV) first instalment claims for the total loss of motor vehicles, the methodology applied by the Panel was to compare the original value of the vehicle, the amount claimed and the value indicated in the Motor Vehicle Valuation Table (the "MVV value") 12/ and to award the lowest of the three amounts. One of the claims in the second instalment is for the loss of a vehicle described as a "1981 D-Mach-45 ton Jack Hammer Crane". The MVV table does not have a matching value for such a vehicle. The Panel determined that in such instances, the replacement cost of the vehicle depreciated to reflect the life expectancy of the item should be applied. The Panel applied this principle and was able to determine the value of the vehicle by reference to the evidence provided by the claimant.

C. D6(loss of income) issues

1. Claims for employment that had not commenced as of 2 August 1990

17. A number of D6(loss of income) claims were filed by individuals who assert that, prior to the invasion, they had signed employment contracts with new employers in Kuwait or Iraq for work due to start between 2 August 1990 and 2 March 1991. Others assert that they were in the process of negotiating new employment contracts that were to commence during the period of the occupation but that they had not yet signed such contracts.

18. The Panel determined that where the claimant had signed such a contract prior to the invasion, losses arising from the contract are compensable. However, where the contract had not been signed, the claim

would only be compensable where the claimant has produced a firm letter of intent written by the new employer expressly stating the intention to employ the claimant. The Panel further determined that such contract or letter of intent must contain all the requisite information (i.e., term of employment, salary, etc.) 13/ to allow the calculation of the recommended compensation. In addition, such claimants must provide proof that they had given up their former employment in order to take up the new employment.

2. Claims with country of origin outside Iraq or Kuwait

19. In the First Report, the Panel considered the compensability of a D6(loss of income) claim filed by an employee of the London branch of an Iraqi State-owned bank which closed down soon after the invasion, and concluded that such claim would be compensable regardless of the location of the loss if the loss is shown to be direct. Since the claimant in the first instalment satisfied this and other established criteria, the Panel recommended payment of compensation to him.

20. Part one of the second instalment includes three other claims by employees of the same bank. In reviewing these claims and recommending payment of compensation, the Panel also noted the instructions to claimants in paragraph 4 on the first page of the Claim Form (based on Governing Council decisions 7, 9 and 15) 14/ that as long as the loss was "direct" it was immaterial that it could also be attributed to the trade embargo. 15/

3. Claims for more than one employment running concurrently

21. Some claimants are claiming for loss of income in respect of more than one employment that they held concurrently. The Panel noted that this employment practice was not uncommon in Kuwait and decided that a claimant is entitled to claim compensation in respect of more than one employment situation provided that the claimant could legally engage in and provide evidence of such employment, the remuneration earned, and establish that the loss is the direct result of the invasion and occupation of Kuwait. 16/

4. Claims for entitlements under a profit-sharing scheme

22. The Panel reviewed claims for loss of entitlements under a profit-sharing scheme that formed part of the remuneration owed to the claimant. In most cases this entitlement was confirmed by the claimant's employment contract. In considering whether claimants who were employed in Iraq or Kuwait prior to the invasion and occupation of Kuwait are entitled to compensation under such profit-sharing schemes, the Panel followed its determinations in the First Report where it held that in calculating a claimant's salary only amounts that are quantifiable in advance and can be allocated to a monthly income should be taken into consideration. 17/ The Panel held that since the annual profit of a company is an uncertain amount that cannot be allocated to a monthly income, the claimants would not be

entitled to compensation under D6(loss of income) for entitlements resulting from a profit-sharing scheme.

5. Contracts terminated by the Government of Kuwait

23. A number of claims were submitted by claimants who had been employed in Kuwait prior to the invasion and whose employment was terminated by the Government of Kuwait after 2 March 1991. The Panel held that since, Governing Council decision 7 provides that only losses arising directly from Iraq's invasion and occupation of Kuwait are compensable, the post-liberation termination of the employment of such claimants was an act of the Government of Kuwait rather than an action of Iraq. Accordingly, the Panel determined that such claims are not eligible for compensation.

6. Claims for difference in salary received prior and subsequent to the invasion and occupation

24. The Panel considered four claims filed by the staff of an embassy operating in Iraq prior to the invasion and occupation of Kuwait. The claimants have claimed for the difference between the salary received while posted in Iraq and that received in their home country following their repatriation.

25. Since the four claimants in question did not lose their jobs but merely suffered a reduction in their salaries because of their repatriation from Iraq, the Panel concluded that the claimants are not entitled to compensation from the Commission.

7. Claims for additional benefits

26. A number of soldiers who were employed by the Kuwaiti Ministry of Defence have claimed under D6(loss of income) for allowances for weapons, medals and technical expertise as part of their basic salary entitlements. The contracts of some of these claimants provide that the claimants are entitled to these allowances by virtue of the "applicable army law".

27. After reviewing the claims, the Panel determined that since the referenced allowances were quantifiable, could be allocated to a monthly salary, 18/ and were incidental to the claimants' profession or occupation, they are compensable.

8. Claims for intellectual property

28. A number of claims have been submitted under D6(loss of income)["D6 (other)"] for the loss of intellectual property such as research materials, including, inter alia, collections of micro-organisms genetically modified for research, computer software libraries, manuscripts, experimental data and specimen. While some of these materials were acquired and used by the claimants in the course of their employment, others were not. In

considering whether these losses have been appropriately filed under D6(other), the Panel took the view that losses claimed under D6(other) should be limited to income pursuant to a contract of employment. Therefore, losses of the nature described above could be dealt with under D4(personal property) or D(other) or another appropriate loss type depending on the nature of items being claimed. The Panel therefore decided to deal with such claims on a case-by-case basis.

9. Claims for loss of "support"

29. Some claims presented to the Panel under D6(loss of income) also included claims for loss of support provided to others. The Panel takes the view that a claimant who has filed a claim for loss of income would not be entitled to claim for the support given to a family member or members since the support would have come out of the claimant's salary. Similarly, where someone has filed a claim for loss of income, a member of the claimant's family would not be entitled to claim for the loss of "support" because the "support" payment would have been paid from the claimant's income.

30. The Panel took note of the category "C" Panel's view 19/ that the following three categories of individuals were entitled to claim "support" on the C6 page of the category "C" claim form:

(a) gainfully employed persons whose ability to work has been permanently or temporarily affected as a result of a permanent or temporary disability or other injury;

(b) claims by persons who are not yet employed, but who, as a result of a permanent disability, may never be able to be fully employed; and

(c) claims by family members of income earners in Kuwait or Iraq who are unable to continue making certain payments such as alimony, regular dependant payments, subsistence payments, etc. to their family members, due to having lost their employment as a result of Iraq's invasion and occupation of Kuwait, or as a result of some permanent or temporary disability. In such circumstances, it must also be verified that the income earner has not filed a claim on his or her own behalf.

31. The Panel determined however that only those claims falling into group (c) above should be dealt with under D6(loss of income) while those falling into groups (a) and (b) would be re-categorized as D2 (personal injury) claims as they are more appropriately dealt with under that loss type.

10. Treatment of end of term indemnities

32. A number of claims for D6(loss of income) also include loss of end of service indemnities. Some of the claimants employed in Kuwait prior to the invasion and occupation of Kuwait have acknowledged receiving such end of term indemnities while others have not. In reviewing these claims, the Panel took note of information provided by the Government of Kuwait that it had paid end of service indemnities to certain non-Kuwaiti employees in the public sector who did not return to Kuwait for the purposes of employment. According to the Government of Kuwait, as at 1994, over 57,000 such employees had received their indemnities. 20/ The Panel further noted that the Government of Kuwait did not file a claim with the Commission for the reimbursement of these benefits to non-Kuwaitis.

33. In the light of the above information, the Panel has taken into consideration the fact that end of term indemnities had already been factored into the D6(loss of income) salary multiplier. The Panel therefore concluded that, where evidence exists that a claimant had received such end of term payments, they should be deducted from the recommended amount of compensation payable under D6(loss of income). The Panel has also instructed the secretariat to request the Government of Kuwait to confirm on a case-by-case basis whether those claimants who have filed D6(loss of income) claims and who were employed with the Kuwaiti Government prior to the invasion have received end of term benefits.

11. MPA Claims

34. Of the few D6(loss of income) claims for mental pain and anguish ("D6(MPA)") that were presented to it, the Panel found that only one claimant met the jurisdictional requirement laid down in Governing Council decision 3. 21/ According to that requirement, the claimant must prove that he/she was deprived of all economic resources so as to threaten seriously the claimant's survival and that of the spouse, child or parent, in cases where assistance from the claimant's Government or other sources has not been provided. The only successful D6(MPA) claimant provided documentary evidence which established that he had been totally deprived of all his economic resources which led to severe stress and resulted in the claimant having serious physical problems.

D. D(other) issues

1. Scholarships

35. The Panel considered whether claims for loss of scholarship allowances filed by individuals studying outside Kuwait are compensable. The claimants concerned asserted that as a result of the invasion and occupation, their monthly allowances were stopped and that they were forced to look for alternative means of funding their education.

36. The Panel determined that the inability of Kuwaiti authorities to continue the payment of such allowances constitutes a loss directly resulting from Iraq's invasion of Kuwait and that such claims are therefore compensable. The Panel further determined that for a claimant to be entitled to compensation for such loss, the claimant must provide appropriate documentary evidence of the existence and amount of the original scholarship as well as evidence of enrolment at another educational institution, and of the alternative means of funding. The claimant would only be entitled to compensation for the academic year immediately following the invasion of Kuwait.

2. Claims for additional education allowances

37. A number of claims have been filed for additional educational expenses on the basis that, since all educational institutions in Kuwait were closed, the claimants were forced to send their children to schools or universities outside Kuwait.

38. The Panel determined that such additional educational expenses are the direct result of the invasion and occupation of Kuwait and are therefore compensable. To be entitled to compensation for such additional educational expenses, the claimant must provide evidence of the child's pre-invasion enrolment in an educational institution in Kuwait indicating the tuition fees, evidence of the child's departure from Kuwait after the invasion, enrolment in another institution outside Kuwait and the fees paid to that institution. The claimant would only be entitled to compensation for the academic year following the invasion of Kuwait.

E. Deduction of compensation received

39. Some, but not all, of the claimants from one submitting entity have provided evidence of having received compensation from their Government for having been taken hostage in Iraq or Kuwait during the period of the invasion and occupation of Kuwait. The Panel considered firstly, whether the amounts received by such claimants from their Governments should be deducted from any compensation payable to them and secondly, whether those claimants who did not indicate that they had received such payments should be treated in the same manner.

40. The Panel held, firstly, that since claimants were required in the category "D" claim form to indicate if they had received any compensation from other sources in respect of the invasion and occupation, and secondly, since the Government concerned has confirmed the payment of such compensation, the amounts in question should be deducted from the recommended award for all the claimants concerned, whether they indicated receiving the payments or not.

III. D2 (PERSONAL INJURY) LOSSES

A. Introduction and factual background

41. Fourteen of the claims in part one of the second instalment are for damages arising out of personal injury ("D2 claims"). The total number of D2 claims in the category "D" population is currently 361 with an asserted value of US$62,065,137.91. This amount does not include claims for MPA as there is no provision on the claim form for the claimant to assert amounts for MPA.

42. In paragraph 29 of the First Report, the Panel made reference to the severe reduction in health care facilities in Kuwait following Iraq's invasion and the fact that civilians who remained in Kuwait were frequently denied access to hospitals. The Panel also referred to numerous reports submitted regarding torture and cruel, inhuman and degrading treatment by Iraqi occupying forces resulting in serious injuries. The Panel has further considered a report on traumatic stress and mental health disorders in post-liberation Kuwait. 22/

43. The Panel also considered it relevant to take into account the report of the Panel of Experts that reviewed compensation for claims for MPA ("the MPA Panel") which was examined for the purpose of dealing with D3(Death) claims in the First Report. 23/ The Panel has therefore considered extensive background information in relation to its review of the D2 claims in the present instalment.

B. Applicable Governing Council decisions

44. The definition of "serious personal injury" is found in Governing Council decision 3 as follows:

"Serious personal injury

1. 'Serious personal injury' means:

(a) Dismemberment;

(b) Permanent or temporary significant disfigurement, such as substantial change in one's outward appearance;

(c) Permanent or temporary significant loss of use or limitation of use of a body organ, member, function or system;

(d) Any injury which, if left untreated, is unlikely to result in the full recovery of the injured body area, or is likely to prolong such full recovery.

2. For purposes of recovery before the Compensation Commission, 'serious personal injury' also includes instances of physical or mental injury arising from sexual assault, torture, aggravated physical assault, hostage-taking or illegal detention for more than three days or being forced to hide for more than three days on account of a manifestly well-founded fear for one's life or of being taken hostage or illegally detained.

3. 'Serious personal injury' does not include the following: bruises, simple strains and sprains, minor burns, cuts and wounds; or other irritations not requiring a course of medical treatment."

45. With respect to claims for MPA in respect of serious personal injury, Governing Council decision 3 provides as follows:

"Mental pain and anguish

Compensation will be provided for pecuniary losses (including losses of income and medical expenses) resulting from mental pain and anguish. In addition, compensation will be provided for non-pecuniary injuries resulting from such mental pain and anguish as follows:

(a) A spouse, child or parent of the individual suffered death;

(b) The individual suffered serious personal injury involving dismemberment, permanent or temporary significant disfigurement, or permanent or temporary significant loss of use or limitation of use of a body organ, member, function or system;

(c) The individual suffered a sexual assault or aggravated assault or torture;

(d) The individual witnessed the intentional infliction of events described in subparagraphs (a) (b) or (c) on his or her spouse, child or parent."

46. Governing Council decision 8 24/ sets out the amounts payable for MPA in respect of serious personal injury to a claimant or in respect of witnessing a serious personal injury inflicted on his or her spouse, child or parent as follows:

CATEGORY A: A spouse, child or parent of the individual suffered death.

US$ 15,000 ceiling per claimant;

US$ 30,000 ceiling per family unit.

CATEGORY B: The individual suffered serious personal injury involving dismemberment, permanent or temporary significant disfigurement, or permanent or temporary significant loss of use or limitation of use of a body organ, member, function or system.

US$15,000 ceiling for dismemberment, permanent significant disfigurement, or permanent loss of use or permanent limitation of use of a body organ, member, function or system;

US$5,000 ceiling for temporary significant disfigurement or temporary significant loss of use or limitation of use of a body organ, member, function or system.

CATEGORY C: The individual suffered sexual assault or aggravated assault or torture.

US$5,000 ceiling per incident.

CATEGORY D: The individual witnessed the intentional infliction of events described in Categories A, B or C on his or her spouse, child or parent.

US$2,500 ceiling per claimant;

US$5,000 ceiling per family unit."

47. The payments specified in Governing Council decision 8 are payable cumulatively where more than one situation applies with respect to particular claimants. However, the decision provides that an overall ceiling applies to the total cumulative amounts available to claimants for payments for MPA in the sum of US$30,000 per claimant, and US$60,000 per family unit.

C. Category "D" claim form requirements

48. D2 claims are covered by pages D2.1 and D2.2 of the category "D" claim form. The D2.1 page states that claimants who have submitted claims in category "B" for serious personal injury may also submit claims in category "D" if their losses exceed US$2,500. The types of injuries listed on page D2.1 of the claim form are as follows: dismemberment, disfigurement (permanent or temporary), loss or limited use of body organs (permanent or temporary), sexual assault, torture, and aggravated physical assault. Claimants are entitled to claim for medical expenses and for MPA in respect of the injuries listed, or as stated on the D2.2 page, for witnessing the intentional infliction of an injury on the claimant's spouse, child or parent.

49. In addition to the injuries listed, claimants may submit claims for other injuries requiring medical attention, though there is no provision on the form to claim MPA in respect of such injuries. The form also provides for claims for lost earnings or future profits arising from the injury.

50. The instructions on the D2.1 page of the claim form require the claimant to submit a statement describing what happened to the claimant, and the nature and extent of the injury. The claimant is also required to submit a separate sworn statement and/or sworn statements of any witnesses to the cause and circumstances of the injury, and appropriate documentary evidence such as certificates issued by a doctor, hospital or other medical care provider, or medical or insurance records.

51. Where the claim is for medical expenses, the claimant is advised to provide itemized bills of expenses incurred, receipts of payments made, photographs and a doctor's report. Claims for MPA and for lost earnings or future profits must also be substantiated by documentary and other appropriate evidence. If the claim is for MPA for witnessing the intentional infliction of an injury to a family member, the claimant is required to give the name and identification details of the family member, and a description of the injury and circumstances in which it occurred. The claimant is also asked on the D2.2 page to enter information concerning any insurance claim that the claimant may have made in respect of the injury.

D. Factual description of D2 claims

52. The D2 claims in part one of the second instalment are claims largely for the loss of future income whereby each claimant asserts that he or she is either partially or totally disabled because of injuries suffered as a result of Iraq's invasion and occupation of Kuwait. The claims are for reduced earnings where the claimant is partially disabled, or for a total loss of earning capacity where the claimant is unable to work at all.

53. Claimants have made claims in respect of personal injuries as a result of the following occurrences: being shot or beaten by Iraqi soldiers; land mine explosions; physical or psychological disorders brought on by stressful situations experienced in Kuwait, and for similar disorders or heart attacks brought on by scud missile attacks on Israel. Some claimants had pre-existing conditions at the time of the invasion that they claim were exacerbated due to lack of medical treatment, or due to stress that they suffered as a result of fear for their safety at the time of the invasion and occupation.

54. All the D2 claims in part one of the second instalment are well documented. They contain personal statements from the claimants describing what happened to them and the nature and extent of the injuries. A few of the claims contain witness statements.

55. All of the claimants have submitted medical reports from doctors, hospitals or a Government authority describing the nature and extent of their injuries, the types of treatment given to the claimants, and a prognosis. Where the claim is for loss of income and the claimant was employed prior to suffering the injury, each claimant has submitted evidence of a reduction in salary, where applicable, or of the prior level of remuneration forming the basis of a claim for a total loss of future income.

56. Three claimants submitted claims for Post Traumatic Stress Disorder ("PTSD") caused or exacerbated by scud missile attacks on Israel. Owing to the mental state of these claimants, they submitted their claims through authorized representatives. Another claimant submitted a claim on behalf of his son who was injured and was still a minor at the time the claim was filed.

57. Claims for the loss of future income have also been submitted by persons who were not employed at the time of injury due to the fact that they were minors, students, or beyond the age of employment. The claimants have provided proof of the fact that they were injured as well as medical certificates describing the percentage disability.

E. D2 Methodology

58. Having reviewed the D2 claims in the second instalment, the instructions set out on the category "D" claim form, the factual, background, and other reports mentioned above, the relevant Governing Council decisions and applicable Rules, and the methodology adopted by the category "B" and "C" Panels, the Panel adopts the D2 methodology set out below.

1. Preconditions

(a) Definition of serious personal injury

59. D2 claims for personal injury should only be compensable where the injury falls within the definition of serious personal injury set out in Governing Council decision 3.

(b) Fact of injury

60. Claimants must prove that the injury occurred. Proof should be in the form of a statement from the claimant and/or witness statements describing what happened to the claimant and the nature and extent of the injury. The claimant should submit medical reports from doctors, hospitals, or other health care providers confirming the nature and extent of the injury and the effect of the injury on the claimant.

(c) Injury to have occurred during the jurisdictional period

61. The claimant should submit proof that the injury occurred during the jurisdictional period (i.e., between 2 August 1990 and 2 March 1991). Where the injury occurred outside the jurisdictional period, claimants will have an added burden of showing why the injury should be regarded as resulting directly from the invasion and occupation of Kuwait. In the context of resolving claims for death, the Panel has already determined that, consistent with Governing Council decision 12 25/, claims arising out of land mine explosions that occurred outside the jurisdictional period are compensable. The same principle would apply to claims for personal injuries.

(d) Causation

62. To be compensable, the injury must have been suffered as a direct result of Iraq's invasion and occupation of Kuwait and claimants are required to submit evidence to that effect. As stated by the Panel in the First Report in the context of D3(death) claims, if the loss is direct, it is compensable regardless of the location in which the claimant suffered the loss or damage. 26/ Accordingly, D2 claims arising out of military attacks on Israel are also compensable.

(e) Only the injured person should claim

63. D2 claims should be submitted only by the individual who suffered the serious personal injury. However, under the normal rules pertaining to minors and persons who are otherwise unable to submit a claim for themselves, an authorized representative can submit the claim. In such situations, any compensation awarded should be awarded only to the individual who suffered the injury.

2. Valuation

(a) Claims for medical expenses

64. For D2 claims for medical expenses where the claimants have proven the fact of injury and that the injury resulted directly from the invasion and occupation, the claimant should submit evidence in the form of medical bills or receipts for amounts paid.

65. Taking into consideration the fact that there were few medical records kept in Kuwait during the period of the invasion and occupation, 27/ where the claimant was in Kuwait and has proved the fact of the injury but is unable to provide adequate documentary evidence of medical expenses, the claimant should provide details of the amounts spent as well as the medical services provided. Claimants who were outside Kuwait during the occupation would ordinarily be required to provide direct documentary evidence of their injuries and medical expenses.

(b) Claims for loss of future income or profits

66. Claims for the loss of future income or profits should be compensable where the claimant has submitted proof from a doctor stating that the claimant is partially or totally disabled, and certifying the extent to which the claimant is able or unable to work. In developing the methodology for D3(death) claims, the experts retained to assist the Panel also recommended a methodology for calculating loss of income in cases of personal injury, similar to that developed for loss of support in D3(death) claims.

67. In accordance with the recommendation made by the experts, in cases where the claimant is totally disabled, he or she should submit evidence of employment and salary received prior to suffering the injury. Where the claimant is only partially disabled, the claimant should submit evidence of employment and of the claimant's salary before and after the injury, demonstrating any reduction in salary due to partial disability. In both cases, compensation would be calculated based on the present value of the claimant's future income, with a percentage reduction that reflects the extent to which the claimant is able to work in cases of partial disability. 28/

68. Consistent with its view set out in the First Report, the Panel has determined that the same discount rate and life expectancy tables as those adopted by the Panel for use in determining compensation for loss of support for D3(death) claims should be applied in the case of D2 claims. The Panel has also retained the same groupings for the submitting entities that have filed D2 claims on behalf of their nationals and residents. Where the claim is only for partial disability, a percentage representing the extent of the claimant's disability is applied to the income in calculating the amount to be awarded to the claimant.

69. In cases where the claimant is partially disabled, the Panel studied the treatment of disabilities in several countries and found that each country applied a different percentage disability to the same type of injury. 29/ In order to ensure consistency in the percentage representing disability that would be applied to all claimants, the Panel developed its own "Table of Maims" taking into consideration the rates applied in the entities covered by the study. Where a serious personal injury is not covered by the Panel's table, the percentage to be applied will be separately determined by the Panel.

70. As stated above, some of the D2 claims are on behalf of persons who were not employed at the time of injury and are either partially or totally disabled. In some claims there is medical evidence to the effect that it is unlikely that the claimant will ever be able to work. In such cases the Panel has determined that a "deemed income" will be attributed to the claimant for purposes of calculating the present value of the future income that the claimant would have earned. The "deemed income" is determined by

taking into account the age of the claimant and the average annual salary applicable in the country where the claimant was likely to be employed.

(c) Claims for exacerbation of a pre-existing condition

71. Where the claimant has a pre-existing condition and has proved that the condition was exacerbated as a result of the invasion and occupation, the Panel will determine in accordance with the evidence provided the extent to which the deterioration in the claimant's condition is a result of the invasion and occupation. Where the claim is for a loss of future income, the Panel will determine the percentage representing disability to be applied in calculating the compensation to be awarded.

(d) Claims for serious personal injuries of a temporary nature

72. Where the claimant suffered a serious personal injury of a temporary nature, the Panel will recommend the award of a lump sum depending on the nature and duration of the injury suffered by the claimant.

3. Claims for MPA

(a) MPA for serious personal injury

73. Claimants are required to indicate on the claim form whether in addition to their claim for personal injury, they also seek compensation for MPA in respect of the same personal injury and to provide appropriate documentary evidence to support the claim for MPA.

(b) Claims for MPA for witnessing the intentional infliction of events leading to a serious personal injury

74. Some claimants have submitted claims for MPA for witnessing the intentional infliction of events leading to the injury of the claimant's spouse, child or parent in cases where the injury was the result of scud missiles fired against Israel by Iraq. In such cases the Panel determined that the claims would be compensable. However, the claimant must prove the fact of injury with appropriate medical evidence, the family relationship to the injured person and MPA suffered. In three cases considered by the Panel, although it has recommended an award of compensation to each claimant suffering the injury, the Panel considered there was insufficient evidence of the MPA claimed by a relative.

(c) Valuation of MPA

75. Where the claimant has satisfied the requirements set out in (a) and (b) above, the Panel would recommend the award of appropriate compensation based on the amount specified in Governing Council decision 8.

F. Panel determinations with regard to D2 claims

76. The D2 claims reviewed by the Panel in part one of the second instalment were well documented. The Panel found that all the D2 claims in part one of the second instalment were compensable to the extent that they met the prescribed evidentiary standards. Where the claim was for medical expenses, compensation was recommended for amounts substantiated by appropriate documentary and other evidence. The amounts recommended as compensation for the loss of future income were calculated pursuaht to the valuation criteria described above. In respect of one claim where the injured claimant's condition was temporary, the Panel has recommended a lump sum award. Where the evidence showed it was uncertain whether the claimant's injury would develop into a permanent disability but the claim was limited to compensation for the loss of income for the period that the claimant was unable to work up to the time of submitting his claim, the Panel has recommended an award of the amount claimed. The Panel rejected a claim for the loss of rental income arising from the fact that the claimant had to return to his home country and reside in his house, which he had been renting out, as he could no longer work in Kuwait due to a personal injury.

IV. D5 CLAIMS FOR LOSS OF BANK ACCOUNTS, STOCKS AND OTHER SECURITIES

A. Introduction and factual background

77. There are 15 D5 claims for loss of bank accounts, stocks and other securities in part one of the second instalment ("D5 claims"). The total number of D5 claims in the category "D" claims population is currently 417, with an asserted value of US$60,930,288.67.

78. The Background Reports considered in the First Report provide some information on banking operations in Kuwait at the time of the invasion and occupation, as well as after the liberation of Kuwait, and state that there was little information available on banking operations in Iraq. 30/ At the time of the invasion on 2 August 1990, many persons left Kuwait under emergency conditions and, as it was a weekend in Kuwait, were not able to withdraw funds from their bank accounts. The majority of the banks in Kuwait remained closed during the period of the occupation. The assets of Kuwaiti banks in many countries were frozen, and banks outside Kuwait did not have access to bank records for customers with funds on deposit in Kuwait.

79. According to a letter dated 15 October 1991 from the Government of Kuwait addressed to the Executive Secretary of the Commission, banks resumed operations on 24 March 1991. 31/ All bank account deposits were restored to their pre-invasion balances where forced withdrawals had been made, and interest for the period of the occupation was calculated and added to each account. Withdrawals from bank accounts were restricted for

a period of five months until 3 August 1991. After that date, persons in Kuwait were able to withdraw their funds without restriction. 32/

80. For foreign account holders who had not returned to Kuwait, the Government of Kuwait informed the Commission that Kuwaiti banks adopted measures, under the direction of the Central Bank of Kuwait, to make funds in bank accounts freely available to the beneficiaries of those accounts. The Kuwaiti Government has stated that the following procedures were implemented to allow foreign account holders to withdraw their funds in Kuwaiti banks:

i. an account holder completes a withdrawal request at the correspondent bank, stating the available account details, the name of the bank and the branch concerned;

ii. the account holder signs the request form to be verified by the correspondent bank;

iii. the correspondent bank transmits the request to the Kuwaiti bank concerned; and

iv. the Kuwaiti bank transfers the funds as requested by the account holder as soon as the request can be processed. 33/

81. By letter dated 25 October 1991, the secretariat informed over 80 Governments, believed to have claimants eligible to submit bank account claims, of the procedures instituted by the Central Bank of Kuwait to enable access to foreign nationals formerly resident in Kuwait.

82. A further letter dated 19 April 1993 was sent to the Commission by the Deputy Chief of the Kuwaiti Banks Committee, who identified alternative procedures that may be followed by account holders for withdrawing their funds. According to these procedures, account holders should:

I. write a letter to the bank signed by the customer/account holder;

ii. provide a resident inside Kuwait with a Power of Attorney authenticated by an Embassy of Kuwait abroad which states clearly that the representative may withdraw the funds from the bank;

iii. take necessary measures in coordination with a local correspondent bank.

83. The letter further states that "[i]n all circumstances, any proposal submitted by the customer should meet all the information and documentation relevant to the accounts."

84. While there is little information on banking operations in Iraq during the occupation, Iraqi banks and their branch offices continue to be subject to the United Nations' sanctions and economic embargo enacted pursuant to Security Council resolution 661 (1990), the national sanctions implemented by certain countries pursuant thereto, and to provisions of various Iraqi domestic laws.

B. Applicable Governing Council decisions

85. There are no specific Governing Council decisions in respect of D5 claims for loss of bank accounts, stocks and other securities. Therefore, the general criteria for determining the compensability of all category "D" claims as set out in Governing Council decision 7 applies to D5 claims.

C. Category "D" claim form requirements

86. With respect to bank accounts, the category "D" claim form requires claimants to give details of the account holder, the bank name and address, the type of account and account numbers. Claimants are requested to attach documentary evidence of ownership, such as a photocopy of a bank passbook or balance statement, and to document the attempts made by the claimant to withdraw funds from the account(s). The claimant should provide the dates on which such attempts were made.

87. Where the claim is for stocks and other securities, claimants are requested to provide the name of the issuer, details of the quantity of stocks, their value on 1 August 1990, and the amount of loss.

D. Description of the D5 claims

88. One of the D5 claims in the second instalment was made by a claimant who requested the assistance of the Commission in locating bank accounts in Kuwait and Egypt belonging to his father, grandfather and mother who are all deceased.

89. Another claim is in respect of a bank account held in Iraq. The claimant left Iraq during the invasion and occupation and seeks the Commission's assistance in getting his funds transferred from Iraq where the claimant states that the laws prohibit taking money out of the country.

90. There are four claims in respect of cheques issued by persons who were living in Kuwait drawn on banks in Kuwait. The claimants state they were not able to cash the cheques due to the invasion and occupation. Some of the cheques were dated before the invasion and occupation, while others have dates that fall within the period of the occupation. One claimant stated that he had been unable to cash the cheques prior to the invasion due to the fact that he was waiting for certain transactions to be concluded by his company, but that he then left Kuwait after the invasion and did not return. The remaining claimants stated that they had attempted

to find the debtors without success, or that the debtor was in financial difficulties due to the invasion and occupation.

91. There are four claims in respect of investments in stocks and securities. One claimant was taken hostage and claims that he was not able to exercise options under warrants held by him. The claimant also traded on his own account and stated that he normally made large sums of money thereby, but that he was unable to trade during the invasion and occupation. The claimant did not provide any proof of the amounts that he asserted he lost in respect of the income that he normally made on the markets by trading on his own account.

92. The remaining three claims in respect of investments are for a loss or diminution in the value of equity investments in or with Kuwaiti companies. In all three cases, the companies wrote to the claimants offering a settlement and stating that their businesses were affected by the "Gulf War". The companies have not submitted claims to the Commission.

93. Four claimants submitted claims in respect of benefits lost due to the fact that they had left Kuwait and could no longer maintain payments on insurance policies in Kuwait after the invasion and occupation. As a result, they were paid an amount in settlement of what they had paid on the policies and did not receive the benefits that would have been paid had the policies matured. Two of the claimants were not recalled to Kuwait to resume their employment, while the other two claimants state that they were unable to continue the payments due to their strained economic circumstances after leaving Kuwait. The claimants provided insurance contracts showing the sums that they would have received on the maturity of the policies, and confirmation that the benefits to be paid on maturity included a bonus that was added to the sum assured on an annual basis.

E. Methodology for D5 claims

94. The D5 loss type covers losses for bank accounts, stocks and other securities. As the subject matter of each type of claim is distinct, the Panel considered it desirable to divide D5 claims into three groups: claims for bank accounts in Kuwait; claims for bank accounts in Iraq; and claims for stocks and other securities. The Panel has developed a methodology for each group of claims according to the subject matter. The issues to be decided for these groups of claims in respect of ownership, loss and causation are dealt with separately hereafter.

95. Having reviewed the D5 claims in part one of the second instalment, the instructions set out in the category "D" claim form, the factual background described in the Background Reports, the applicable Rules and Governing Council decisions, and the methodologies adopted by the category "C" Panel, the Panel adopts the methodology set out hereafter.

1. Claims for bank accounts in Kuwait

(a) Ownership

96. In accordance with the requirements on the claim form, the claimant must prove ownership of a bank account in Kuwait. As stated on the claim form, proof could be in the form of a photocopy of a bank passbook or balance statement.

(b) Loss

97. In view of the procedures notified by the Government of Kuwait as to how claimants can recover amounts in their bank accounts in Kuwait, the Panel concurs with the views of the category "C" Panel and the "F1" Panel 34/, which accepted as adequate the procedures that have been implemented by the Central Bank of Kuwait in respect of recovering balances in bank accounts in Kuwait.

98. The Panel has accordingly directed the secretariat to write to any claimant that has submitted claims for bank accounts in Kuwait to inform them of the procedures implemented by the Central Bank of Kuwait for the recovery of such accounts.

(c) Causation

99. If a claimant is able to show that he or she has complied with the procedures established by the Central Bank of Kuwait but has still been denied access to his or her bank account in Kuwait, in order for the claim to be eligible for compensation, the claimant will have to prove that the denial of access to the claimant's funds is directly due to the invasion and occupation of Kuwait. The Panel will review such claims on a case-by-case basis.

2. Claims for bank accounts in Iraq

(a) Ownership

100. In accordance with the requirements on the claim form, the claimant must prove ownership of the bank account in Iraq. The claim form states that proof could be in the form of a photocopy of a bank passbook or balance statement.

101. In cases where claimants cannot provide direct documentary evidence that they owned the bank account, correspondence between the claimant and the bank would also be considered by the Panel to be an acceptable basis for proving ownership if the bank's response is an acknowledgment of the claimant's entitlement to act in respect of the account.

(b) Loss

102. The claimant should submit proof that the account has been lost. The claim form asks the claimant to describe the efforts that he or she has made to recover the account.

(c) Causation

103. Pursuant to Governing Council decision 7, claimants must show that the loss was a direct result of Iraq's invasion and occupation of Kuwait. Consistent with the view expressed by the "E2" Panel, in the first instalment of "E2" claims 35/, the Panel took the view that any claimant seeking compensation for loss of bank accounts because of inability to transfer his funds out of Iraq must show that any prohibition on transfer was a direct result of Iraq's invasion and occupation of Kuwait.

3. Claims for stocks and other securities

(a) Ownership

104. As with claims for the loss of bank accounts, claimants should submit proof of ownership of stocks or other securities held by them. Claimants in part one of the second instalment provided proof of ownership in the form of certificates issued by institutions in or with which they had made investments, together with correspondence concerning any settlements offered by the institutions in respect of the claimant's investment. Where the claims were in respect of uncashed cheques, claimants submitted copies of the cheques made out in their favour.

(b) Loss

105. Where the claim is for losses arising out of equity investments, the Panel has established the following principles to deal with such claims: where the company that was the subject of the investment is still in existence and the losses suffered by the claimant are deemed to be indirect, the rightful claimant, if any, would be the company in which the claimant had invested; where the company is no longer in existence, the claimant must prove that the dissolution of the company was a direct result of the invasion and occupation of Kuwait.

106. With respect to claims for cheques that could not be cashed due to the invasion and occupation of Kuwait, claimants are ordinarily under an obligation to present the cheque for payment. If the bank failed to honour the cheque, then the claimant should refer back to the drawer for information on the failure to honour the cheque. In order for such claims to be compensable, a claimant would have to prove that his or her inability to cash the cheque was due to the non-existence or disappearance of the drawer. Documentary evidence would have to be provided showing that the drawer had either gone bankrupt, died or disappeared as a result of the

invasion and occupation. In addition, a claimant should provide the original of the cheque together with proof that non-payment was due to the invasion and occupation.

(c) Causation

107. In order for a loss of stocks and other securities to be compensable, claimants must prove that the loss is a direct result of Iraq's invasion and occupation of Kuwait. In cases where the claimant is unable to recover the amounts due under cheques because the bank has failed to honour the cheque and the claimant states that he cannot recover the sums from the drawer of the cheque, the claim would only be compensable if the claimant proves that the drawer is no longer in existence or has disappeared as a result of the invasion and occupation. Where the drawer has gone into liquidation, the claimant will have to show that the failure of the business was caused directly by the invasion and occupation.

4. Valuation of D5 claims

108. As each D5 claim is for a different type of loss and the underlying documents giving rise to the claim are valued in different ways, each claim will be valued on an individual basis in accordance with the type of transaction and the evidence of loss submitted by the claimant.

5. Panel determinations with regard to D5 claims

109. The Panel reviewed each claim in accordance with the methodology set out above.

110. With respect to the claim for assistance in locating bank accounts in Kuwait, the claimant had submitted letters from banks in Kuwait acknowledging that the banks had accounts in the name of the claimant's grandfather. The Panel directed the secretariat to write to the claimant and inform him of the procedures introduced by the authorities in Kuwait for obtaining access to bank accounts in that country and to establish his right to the funds in the various accounts. The request for assistance in respect of bank accounts in Egypt is outside the jurisdiction of the Commission.

111. The Panel rejected the claim for losses arising from the bank account held by a claimant in Iraq. The claimant did not submit proof of the efforts that he had made to gain access to his bank accounts in Iraq or of whether his inability to transfer his funds out of Iraq was the direct result of the invasion and occupation of Kuwait by Iraq. The Panel did not consider that the Commission could assist him in any way in securing the transfer of his bank account balance in Iraq.

112. With respect to the claim for loss of the opportunity to exercise options under warrants held by the claimant at the time of the invasion and

occupation, or to trade on the markets, the Panel found that these losses were of a speculative nature and furthermore, that the claimant had submitted insufficient proof of the amounts that he claimed he would have made had he exercised the options or been able to trade on the markets. The claim was therefore denied by the Panel.

113. The Panel found that in each of the three claims for losses arising out of equity investments in Kuwait, the claimants had accepted settlements in respect of the diminution in the value of their investments. In one instance the company was still in existence, and, therefore, the company should have submitted a claim for losses suffered; in another case the claimant had been referred to the Central Bank of Kuwait as the agency that was handling the losses of the company in which the claimant had invested; and in the third claim, the shareholders should have appointed a representative to submit a claim on their behalf. Accordingly, all three equity investment claims were denied by the Panel.

114. Where claims were filed by claimants for benefits under insurance policies, the Panel determined that such losses were too remote and, as the claimants had entered into settlements with their insurance companies whereby they were refunded all of the premiums paid by them on the policies, the losses claimed were not compensable. 36/

115. With respect to the claims for cheques, the claimants had only submitted copies of the cheques, had not presented them during their validity period and although they stated that they had attempted to find the drawers and failed to do so, or that the debtors were no longer in existence due to the invasion and occupation, the claimants did not provide adequate proof of the circumstances of loss. Accordingly such claims were rejected by the Panel.

VI. RECOMMENDATIONS

A. Awards by submitting entity

116. The Annex hereto lists the awards recommended by the Panel for each submitting Government and international organization for claimants included in part one of the second instalment. Each Government and international organization will be provided with a confidential list containing the individual recommendations made in respect of its claimants. As will be noted from the Annex, against the total amount claimed of US$46,101,744.00, the Panel has recommended the award of a total amount of US$11,182,109.00.

B. Interest

117. The Panel recommends that interest be awarded pursuant to its determinations as set out in chapter H of the First Report and that due to the number of claims in category "D", it is not possible to calculate the date of loss and therefore the date from which interest accrues

individually for each claim. The Panel concluded, therefore, that "the date the loss occurred" as used in Governing Council decision 16 37/ should be a single fixed date for all category "D" claims. 38/ The Panel accordingly determined that the date of the invasion, 2 August 1990, shall serve as the date from which interest accrues for category "D" claims.

C. Submission through the Executive Secretary to the Governing Council

118. The Panel respectfully submits this report through the Executive Secretary to the Governing Council pursuant to article 38(c) of the Rules.

Geneva, 29 July 1998

(Signed) R.K.P. Shankardass
Chairman

(Signed) H.M. Joko-Smart
Commissioner

(Signed) M. C. Pryles
Commissioner

Notes

1/ S/AC.26/1992/10.

2/ For a complete description of the category "D" claim loss types, see the "Report and Recommendations Made by the Panel of Commissioners Concerning Part One of the First Instalment of Individual Claims for Damages Above US$100,000 (Category 'D' Claims)" (S/AC.26/1998/1), ("the First Report"), para. 10.

3/ A firm of loss adjusters was appointed to assist the Panel in developing the methodology for the valuation of D4(personal property) claims.

4/ S/AC.26/1998/1.

5/ "Report and Recommendations Made by the Panel of Commissioners Concerning Part Two of the First Instalment of Individual Claims for Damages Above US$100,000 (Category 'D' Claims)" (S/AC.26/1998/3).

6/ The Panel issued Procedural Order No. 3, dated 5 February 1998, informing each submitting entity that their claims were included in the second instalment. By Procedural Order No. 4, dated 29 July 1998, the Panel informed each submitting entity with D4(personal property) claims that the second instalment would be split into two parts and also deferred one claim in the second instalment that included losses that the Panel would not be resolving in this instalment.

7/ The claim concerned contains D8/9(business) losses for which the Panel has still to develop a methodology.

8/ The Panel listed the Background Reports in note 6 of the First Report.

9/ S/AC.26/1991/7/Rev.1.

10/ "Report and Recommendations Made by the Panel of Commissioners Concerning the Sixth Instalment of Claims for Departure from Iraq or Kuwait (Category 'A' Claims)" (S/AC.26/1996/3), paras. 27-33.

11/ "Report and Recommendations Made by the Panel of Commissioners Concerning the Sixth Instalment of Individual Claims for Damages up to US$100,000 (Category 'C' Claims)" (S/AC.26/1998/6), paras. 13-15.

12/ The Motor Vehicle Valuation Table provides the standard market values of motor vehicles in Kuwait for the years 1980 to 1990 according to the make, model and the year of the vehicles. The values have been depreciated to reflect the market value of the vehicles as of August 1990.

13/ The First Report, paras. 330-334.

14/ S/AC.26/1992/9; S/AC.26/1992/15.

15/ This is consistent with the findings of the Panel of Commissioners appointed to review the first instalment of E2 claims (the "E2" Panel) contained in the "Report and Recommendations Made by the Panel of Commissioners Concerning the First Instalment of 'E2' Claims" (S/AC.26/1998/7), concerning the scope of the embargo. The "E2" Panel found that the trade embargo "applies only to the import or export of goods or capital into or from Iraq after 6 August 1990", concluding that by Security Council resolution 661(1990), the Security Council intended to capture within the prohibitions of the resolution only activity consisting

of or leading to the import or export of goods or capital into or from Iraq.

16/ The First Report, paras. 300-334.

17/ Ibid., para. 334.

18/ Ibid.

19/ "The Report and Recommendations Made by the Panel of Commissioners Concerning the First Instalment of Individual Claims for Damages up to US$100,000 (Category 'C' Claims)" (S/AC.26/1994/3 and Corr.1), (the "First 'C' Report"), p. 178.

20/ Ibid., p. 173.

21/ S/AC.26/1991/3.

22/ "The Traumatic Events and Mental Health Consequences Resulting from Iraqi Invasion and Occupation of Kuwait", report was prepared by the Al-Riggae Specialized Center for Treatment of War Victims in Kuwait, Ministry of Health, dated 1 December 1993 (the "Al-Riggae Report").

23/ The First Report, paras. 235 and 236.

24/ S/AC.26/1992/8.

25/ See First Report, para. 201.

26/ See First Report, para. 202.

27/ See "Recommendations Made by the Panel of Commissioners Concerning Individual Claims For Serious Personal Injury or Death (Category 'B' Claims)" (S/AC.26/1994/1), p.33 and the First "C" Report, p.108.

28/ The methodology adopted by the Panel in respect of D3(death) claims for loss of support was described at paras. 212-222 of the First Report. The parts of the methodology which would be applied in calculating the compensation to be awarded to D2 claimants are contained in paras 215-217.

29/ The Panel compared the tables listing the percentage of disability associated with different types of injury ("Table of Maims")used in Egypt, Kuwait, Lebanon and by the United Nations. The differences in the percentage of disability attributed to the same injury varied between four per cent and ten per cent amongst the four entities.

30/ See the First "C" Report, pp. 159-167.

31/ Letter from the Public Authority For Assessment of Compensation Resulting From Iraqi Aggression ("PAAC") to the Executive Secretary of the Commission dated 15 October 1991, together with an attachment entitled "Actions Taken in Kuwait Regarding Customer Accounts with Kuwaiti Banks".

32/ Ibid.

33/ Ibid.

34/ "Report and Recommendations Made by the Panel of Commissioners Concerning Part One of the First Instalment of Claims by Governments and International Organizations (Category 'F' Claims)" (S/AC.26/1997/6) (the

"First 'F' Report"). One of the claimants in category "F" submitted a claim stating that it was unable to access funds in its bank account in Kuwait. In resolving the claim, the "F1" Panel accepted PAAC's explanation regarding the procedures put in place by the Central Bank of Kuwait and requested the secretariat to communicate this information to the claimant.

35/ S/AC.26/1998/7.

36/ In its decision on claims by insurance companies in respect of losses suffered through the accelerated maturity of policies resulting from premature deaths caused by acts of Germany in sinking the Lusitania, (The Life Insurance Claims (1924)), the German-United States Mixed Claims Commission (1922) held that the accelerated maturity of insurance policies was not directly attributable to the sinking of the Lusitania by Germany. See B. Cheng, General Principles of Law as Applied International Courts and Tribunals, (London, Stevens and Sons, 1953), (reprinted by Grotius Publications, 1987), p.245.

37/ S/AC.26/1991/16.

38/ The category "C" Panel also found this; see the First "C" Report, pp. 32-33. In the WBC Claim a mid-point date of 15 October 1991 was used. See the "Report and Recommendations made by the Panel of Commissioners appointed to review the Well Blowout Control Claim" (the "'WBC' Claim") (S/AC.26/1996/5/Annex). In that claim, however, the losses were quite different from those suffered by individuals in categories "C" and "D," and different criteria therefore applied to the determination of relevant dates.

Annex

Summary Recommendations of Part One of the Second Instalment of Category "D" Claims

Submitting Entity	Amount Claimed (US$)	Number of Claims Recommended for Payment	Number of Claims Not Recommended for Payment	Amount of Compensation Recommended (US$)
Australia	185,942	1	3	19,409
Canada	955,140	1	3	51,900
Denmark	92,571	1	--	25,086
France	86,584	1	--	58,338
India	5,767,541	24	--	524,074
Ireland	4,650	1	--	4,650
Israel	4,251,997	4	--	596,514
Italy	951,273	1	4	41,107
Jordan	11,867,165	35	12 1/	1,847,662
Kuwait	5,148,182	55	--	2,915,801
Lebanon	299,678	2	1	122,360
Pakistan 2/	71,910	2	--	117,799
Poland	252,209	1	--	25,494
Sudan	6,004,115	22	3	1,116,213
Sweden	770,000	--	1	0
Syria	487,580	5	--	243,744
United Kingdom	4,651,718	29	1	1,604,892
United States of America	3,905,646	32	2	1,761,189
UNRWA (Gaza)	347,843	2	1	105,876
Total	46,101,744	219	31	11,182,109

1/ One claim from the Hashemite Kingdom of Jordan has been deferred.

2/ Represents D6 claims where the claimant has also made a C6 claim; the "Amount Claimed" is the amount claimed in category "D"; the "Amount of Compensation Recommended" is the amount recommended to be awarded in category "D", calculated on the basis of the claims made both in categories "C" and "D" and where the C6 claim has not yet been decided. The compensation awarded in the C6 claim, if any, will be deducted from the D6 award prior to the payment of such award.